

THE RESTITUTION REVIEW

The State Board of Control's Quarterly Newsletter on Restitution Issues

NATIONAL CRIME VICTIMS' RIGHTS WEEK

The week of April 13th through the 19th 1997, marks the annual recognition of victims' rights across the country through National Crime Victims' Rights Week. The theme of Crime Victims' Rights Week is Let Victims' Rights Ring Across America, and reflects the need to publicize victims' rights and needs in communities large and small, and ensure that the voice of the victim is heard. Additionally, Victims' Week is designed to honor victims, remember their pain, and to memorialize their losses.

Twenty-five years ago, America's first victims' rights organizations opened their doors to provide support and assistance to people who were hurt by crime. Today in the United States, there are over 30,000 federal and state laws that define and protect the rights of crime victims. All states have enacted victims' rights laws, including constitutional amendments on victims' rights in 29 states. Additionally, in April of 1996, a Victims' Rights Constitutional Amendment was introduced in Congress and has

received strong bipartisan support. It was endorsed in both national political parties' platforms and by both presidential candidates in 1996. The federal amendment, which was reintroduced in the 105th Congress in January 1997, has broad support from organizations representing national, state and local victim services, law enforcement, criminal justice and community and institutional corrections.

According to Aileen Adams, Director of the Office for Victims of Crime within the U.S. Department of Justice, "What began 25 years ago as a small but determined grassroots movement has developed into a respected discipline comprised of crime victims, victim advocates, and justice and allied professionals, all of whom share a commitment to justice and healing for crime victims. Throughout National Crime Victims' Rights Week, thousands of professional and volunteer organizations join together with groups in your community to let victims' rights ring across America with the sound of safety, security, support, and service for all people."



*continued on page 2

In observance of National Crime Victims' Rights Week, the State Board of Control (Board) and other organizations will participate in various activities to promote the message of victims' rights.

The Board has designed a new poster for the Victims of Crime Program (VOCP) which has been distributed to the Governor, members of the Legislature, hospitals, municipal and superior court judges, court administrators, law enforcement agencies, county district attorney and probation offices, parole offices, victim/witness assistance centers, victim organizations, and interested parties. The poster encourages victims to contact the "1-800-VICTIMS" telephone number for victim referral services, and depicts a torn heart mended with a band-aid to remind victims that VOCP is not just a band-aid, but rather an important element for assisting victims in the healing process by reimbursing them for crime-related expenses.

For the fourth consecutive year, the Board has distributed approximately 100,000 victim awareness ribbons throughout the state. As in past years, the teal ribbons signify victims' rights and will be sent to the Governor, members of the Legislature, all Victim-Witness Assistance Centers, and various state agencies and victim organizations. If you would like to receive ribbons or posters for your organization, please contact Sharon Vigil, Legislative Analyst at (916) 323-2949.

The Board is pleased to participate in the California Correctional Peace Officers Association's 8th Annual March on the Capitol which will take place on April 15th, 1997. The march commemorates Victims' Week with a rally at the Capitol and will include speeches from various speakers from

the victim's community, as well the distribution of victim service information from victim organizations. Additionally, the Board has designed and supplied buttons to the Doris Tate Crime Victims Bureau for distribution during the March on the Capitol.

Please join the Board and other criminal justice entities/organizations in honoring National Crime Victims' Rights Week by renewing your commitment to ensuring that fair treatment and comprehensive services are available for all victims of crime.☒

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HOW RESTITUTION IS HANDLED WHEN A CIVIL AND CRIMINAL CASE EXIST

Often, an offender is not only prosecuted criminally, but is sued in the civil arena by the victim and/or his/her family. Therefore, it is important to clarify how restitution should be imposed in the criminal matter when this situation exists.

In those situations when a victim has initiated a civil case against an offender, and the case is pending at the time the offender is sentenced, the Penal Code requires that the court order restitution according to Penal Code §1202.4 (b) and (f). This includes the ordering of a restitution fine and an order for losses incurred by the victim or benefits paid by the Victims of Crime Program. The imposition of a restitution order in the criminal case should not be influenced by the existence of the civil case.

Additionally, in the event the offender pays restitution in accordance with the criminal sentence and then receives a civil judgment requiring the payment of a settlement to the victim, Penal Code §1201.4 (j) states that any restitution collected shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted. In the reverse, if a victim receives civil suit monies and then receives a restitution order for the same losses, the restitution ordered should be credited in the amount paid in the civil matter. Because the civil arena allows for awards which include pain and suffering and other non-economic losses, it is important to credit only those monies paid in the civil matter for the same losses imposed as a result of the restitution order.

By imposing restitution in accordance with the Penal Code and then crediting monies paid by the defendant for the same losses, the criminal justice community can ensure that the victim is compensated for out-of-pocket losses incurred as a result of the crime, and the offender does not “double-pay.” ❏



"TO BE DETERMINED" RESTITUTION ORDERS

In researching issues that effect the successful imposition and collection of restitution, the Board of Control has discovered that the imposition of “to be determined” (TBD) restitution orders, is an integral part of ensuring that a victim may receive restitution for losses incurred as a result of a crime.

The importance of TBD restitution orders is especially important in the current criminal justice arena because of the large number of offenders who are “fast-tracked” through the criminal justice process by utilizing the plea bargain process. Because the nature of the plea bargain is to complete the sentencing phase of the criminal justice process in an expeditious fashion, offenders are often sentenced long before a victim’s losses are fully ascertained. Board staff has found that in those situations when a victim’s losses are not known at the time of sentencing, one of two things occurs. Either there is no restitution ordered, or a “to be determined” (TBD) restitution order is imposed. Please note, Penal Code §1202.4(f) mandates that if a victim’s losses are unknown at the time of sentencing, the court is required to impose a TBD restitution order.

*see TBD page 7

RESTITUTION ORDER APPELLATE COURT DECISION

In past publications of the *Restitution Review*, articles have focused on the need for the imposition of restitution for every conviction especially in those cases when a case is plea bargained. Recently, the case of *People v. Rowland* (1997) 52 Cal.App.4th 1745 (1st Dist.) reemphasized this point.

In the case of *People v. Rowland*, the defendant was sentenced to two three-year terms to run concurrently and a restitution fine of \$200 per felony for a total restitution fine of \$400, after pleading no contest to two counts of grand theft and admitting two related excessive taking enhancements. At the time of sentencing, two victims requested restitution of \$145,517.33, but the trial court denied the request. The victims then moved for a modification of the sentence on the grounds that the restitution award was mandatory. The Court of Appeal agreed, and a full award of restitution was imposed without invalidating the defendant's plea.

Regardless of whether a conviction is the result of a plea bargain, Penal Code §1202.4 (f) requires the court to order restitution to the victim or victims in an amount determined by the court, based on the amount of the victim's losses. A restitution order may be reduced and/or waived only if the court finds compelling and extraordinary reasons and states those reasons on the record.☒

RESTITUTION PUBLICATIONS ORDER FORM

PLEASE SEND THE FOLLOWING:

⇒ "Financial Recovery Options for Victims of Crime
in California" Brochure

_____ brochure(s)

⇒ Restitution Guide

_____ guide(s)

⇒ Restitution Reference Sheets:

Adult

_____ sheet(s)

Juvenile

_____ sheet(s)

⇒ Restitution Review Newsletter

_____ newsletter(s)

⇒ Please add me to the Revenue Recovery and
Compliance Branch mailing list (Periodically
you will receive correspondence regarding
restitution and the Restitution Review
Newsletter).

_____ add to mailing list

Your name: _____
Organization/Entity name: _____

Address: _____

Send completed form to:
STATE BOARD OF CONTROL
P.O. BOX 1348
SACRAMENTO, CA 95812-1348

or call (916) 327-0345

BOARD OF CONTROL ANNOUNCES NEW STAFF COUNSEL

The Board of Control is pleased to introduce its new Staff Counsel, Jennifer Anderson. Effective January 1997, Ms. Anderson joined the Board and is responsible for performing a wide variety of legal research, preparing legal opinions, and drafting statutes and regulations concerning criminal restitution and the Victims of Crime Program.

Ms. Anderson's name may seem familiar to many in the criminal justice community. Prior to coming to the Board, Ms. Anderson was Counsel for the Assembly Committee on Public Safety where she was involved in criminal justice legislation with an emphasis in crime victim's rights, criminal procedure, domestic violence, evidentiary laws, peace officers, criminal sentencing and general criminal justice reform.

Additionally, prior to her position with the Assembly, Ms. Anderson worked for three years as a Graduate Legal Assistant at the State Attorney's General's Office. During her tenure with the Attorney General's Office, Ms. Anderson played an integral role in drafting Assembly Bill 817, Chapter 313, Statutes of 1995 (Hoge), which modified and clarified the various restitution statutes.

On a personal note, Ms. Anderson received her Juris Doctorate, from Lincoln Law School of Sacramento in May of 1995, and a Bachelor of Arts degree in Economics from the University of California Davis in September of 1980. Ms. Anderson is a member of the State Bar of California and the American Bar Association; an Advisory Board Member, Doris Tate Crime Victims Bureau; and recently participated in the Sacramento County District Attorney's Office Visiting Prosecutor Program.

The Board welcomes Ms. Anderson and is pleased to have such a knowledgeable resource in the areas of restitution and the criminal justice issues on staff. ☒

JUVENILE RESTITUTION OBLIGATIONS: PARENT/GUARDIAN LIABILITY

Article contributed by
Jennifer Anderson, Staff Counsel
Board of Control

This article is in response to many inquiries the Board has received concerning a parent or guardian's liability for paying a juvenile offender's restitution obligations once the juvenile reaches 18 years of age. For the reasons stated below, the answer to this inquiry is that the parent or guardian's liability is **not** affected by the juvenile turning 18 years of age.

General Overview of Parent/Guardian Liability

A parent or guardian, as specified, can be held liable for the payment of a juvenile offender's restitution obligations under the provisions of Welfare and Institutions Code Section 730.7. Specifically, Section 730.7 provides that a parent or guardian who has joint or sole legal and physical custody and control of a minor shall be rebuttably presumed to be jointly and severally liable with the minor, in accordance with Civil Code Sections 1714.1 and 1714.3, for the amount of restitution obligations ordered.¹

This means that if a juvenile offender is unable to pay his or her restitution obligations, the county or the victim may look to the juvenile offender's parents or guardians for payment of the juvenile's restitution fine and/or restitution order imposed by the court. It should be noted that pursuant to Civil Code Sections 1714.1 and 1714.3, parental/guardian liability is monetarily limited to \$25,000 in most cases, and to \$60,000 in cases when the juvenile caused injury to property or other persons with the use of a firearm. Therefore, depending upon the facts of the case, a parent or guardian may be held liable for up to \$25,000 of a juvenile offender's restitution obligations unless the juvenile caused injury to the victim with a firearm, in which case the parent/guardian may be held liable for up to \$60,000 of a juvenile offender's restitution obligations.

*see juvenile page 7

**CALIFORNIA DEPARTMENT OF CORRECTIONS
RESTITUTION REVENUE
OCTOBER, NOVEMBER, DECEMBER 1996**

INSTITUTION	Oct-96			Nov-96			Dec-96		
	RESTITUTION FROM PAYROLL	RESTITUTION FROM DEPOSITS	TOTAL	RESTITUTION FROM PAYROLL	RESTITUTION FROM DEPOSITS	TOTAL	RESTITUTION FROM PAYROLL	RESTITUTION FROM DEPOSITS	TOTAL
MULE CREEK STATE PRISON	\$4,819.00	\$9,121.27	\$13,940.27	\$4,828.99	\$6,820.14	\$11,649.13	\$5,953.22	\$10,641.87	\$16,595.09
AVENAL STATE PRISON	\$10,375.02	\$14,639.85	\$25,014.87	\$10,454.35	\$11,806.51	\$22,260.86	\$9,145.59	\$15,422.29	\$24,567.88
CALIPATRIA STATE PRISON	\$3,567.34	\$10,920.54	\$14,487.88	\$3,098.79	\$9,528.08	\$12,626.87	\$3,568.96	\$13,028.10	\$16,597.06
CA. CORRECTIONAL CENTER	\$26,679.80	\$12,714.64	\$39,394.44	\$37,520.75	\$10,487.27	\$48,008.02	\$16,556.51	\$12,555.23	\$29,111.74
CA. CORRECTIONAL INSTITUTE	\$8,020.00	\$14,334.04	\$22,354.04	\$5,810.71	\$8,968.97	\$14,779.68	\$7,283.19	\$13,132.00	\$20,415.19
CENTRAL CA. WOMEN'S FACILITY	\$2,973.09	\$8,440.21	\$11,413.30	\$3,254.72	\$6,571.36	\$9,826.08	\$4,630.65	\$10,109.23	\$14,739.88
CENTINELA STATE PRISON	\$1,765.34	\$16,458.65	\$18,223.99	\$1,864.84	\$14,006.50	\$15,871.34	\$1,800.80	\$18,617.69	\$20,418.49
CA. INSITUION FOR MEN	\$6,308.89	\$2,944.17	\$9,253.06	\$6,616.76	\$3,254.87	\$9,871.63	\$5,202.38	\$3,904.44	\$9,106.82
CA. INSTITUTION FOR WOMEN	\$2,845.21	\$2,843.19	\$5,688.40	\$1,254.16	\$3,231.29	\$4,485.45	\$1,599.68	\$3,695.97	\$5,295.65
CA. MEN'S COLONY	\$13,043.70	\$14,061.85	\$27,105.55	\$12,079.12	\$13,835.99	\$25,915.11	\$11,398.95	\$17,485.11	\$28,884.06
CA. MEDICAL FACILITY	\$3,676.40	\$5,780.73	\$9,457.13	\$3,244.96	\$3,543.97	\$6,788.93	\$3,054.01	\$7,917.73	\$10,971.74
CA. STATE PRISON SOLANO	\$7,199.55	\$12,770.32	\$19,969.87	\$7,322.39	\$7,959.87	\$15,282.26	\$7,826.89	\$8,775.46	\$16,602.35
CORCORAN STATE PRISON	\$5,277.07	\$13,293.61	\$18,570.68	\$10,346.08	\$10,851.68	\$21,197.76	\$5,117.33	\$15,913.59	\$21,030.92
CA. REHABILITATION CENTER	\$2,812.72	\$9,795.73	\$12,608.45	\$3,346.89	\$9,471.99	\$12,818.88	\$2,403.27	\$11,600.63	\$14,003.90
CORRECTIONAL TRAINING FACILITY	\$12,986.65	\$12,319.41	\$25,306.06	\$10,822.95	\$10,070.22	\$20,893.17	\$12,000.23	\$16,120.51	\$28,120.74
CHUCKAWALLA VALLEY STATE PRISON	\$3,371.92	\$10,973.81	\$14,345.73	\$2,773.19	\$7,782.81	\$10,556.00	\$2,097.74	\$14,443.78	\$16,541.52
DONOVAN CORR. FACILITY ROCK MTN.	\$9,555.04	\$6,801.85	\$16,356.89	\$3,483.52	\$6,666.01	\$10,149.53	\$6,533.39	\$8,625.33	\$15,158.72
DUEL VOCATIONAL INSTITUTE	\$3,111.40	\$3,332.31	\$6,443.71	\$3,540.62	\$3,037.82	\$6,578.44	\$3,278.01	\$3,393.92	\$6,671.93
FOLSOM STATE PRISON	\$5,779.13	\$9,641.51	\$15,420.64	\$6,585.59	\$8,796.17	\$15,381.76	\$5,449.56	\$8,604.95	\$14,054.51
CA. STATE PRISON, SACRAMENTO	\$2,872.43	\$4,230.53	\$7,102.96	\$1,528.83	\$4,055.12	\$5,583.95	\$2,756.51	\$7,198.05	\$9,954.56
HIGH DESERT STATE PRISON	\$2,434.49	\$10,610.30	\$13,044.79	\$2,497.12	\$9,666.95	\$12,164.07	\$2,667.68	\$9,967.11	\$12,634.79
IRONWOOD STATE PRISON	\$4,263.41	\$7,925.99	\$12,189.40	\$3,023.58	\$7,138.36	\$10,161.94	\$2,601.68	\$10,956.06	\$13,557.74
CA. STATE PRISON L.A. COUNTY	\$2,521.72	\$11,436.74	\$13,958.46	\$3,068.46	\$10,931.42	\$13,999.88	\$2,035.99	\$14,821.16	\$16,857.15
NO. CA. WOMEN'S FACILITY	\$1,814.61	\$2,142.57	\$3,957.18	\$1,919.95	\$1,974.42	\$3,894.37	\$1,604.41	\$2,473.35	\$4,077.76
NORTH KERN STATE PRISON	\$3,038.98	\$3,871.13	\$6,910.11	\$3,056.74	\$4,738.99	\$7,795.73	\$2,635.54	\$5,092.71	\$7,728.25
PELICAN BAY STATE PRISON	\$2,781.46	\$7,078.96	\$9,860.42	\$3,260.37	\$6,372.50	\$9,632.87	\$2,848.38	\$8,310.41	\$11,158.79
PLEASANT VALLEY STATE PRISON	\$3,039.76	\$13,781.20	\$16,820.96	\$3,940.85	\$11,418.02	\$15,358.87	\$2,500.78	\$16,147.68	\$18,648.46
SIERRA CONSERVATION CENTER	\$26,074.07	\$12,642.36	\$38,716.43	\$33,783.40	\$11,323.28	\$45,106.68	\$15,173.01	\$17,406.99	\$32,580.00
SAN QUENTIN STATE PRISON	\$2,974.70	\$3,758.80	\$6,733.50	\$967.11	\$1,599.39	\$2,566.50	\$2,714.39	\$3,339.49	\$6,053.88
SALINAS VALLEY STATE PRISON	\$2,201.87	\$12,741.22	\$14,943.09	\$685.67	\$9,062.53	\$9,748.20	\$785.87	\$17,339.68	\$18,125.55
VALLEY STATE PRISON FOR WOMEN	\$2,740.49	\$9,289.07	\$12,029.56	\$2,429.73	\$7,799.15	\$10,228.88	\$2,152.53	\$9,511.81	\$11,664.34
WASCO STATE PRISON	\$4,955.70	\$3,354.79	\$8,310.49	\$5,060.08	\$3,966.51	\$9,026.59	\$4,241.04	\$3,555.22	\$7,796.26
TOTAL	\$195,880.96	\$294,051.35	\$489,932.31	\$203,471.27	\$246,738.16	\$450,209.43	\$159,618.17	\$340,107.55	\$499,725.72

Although the law requires the imposition of TBD restitution orders, the Board is aware that there are problems associated with administering a TBD restitution order. Once a victim's losses are ascertained, the case must return to court to enter the amount of the victim's losses in the court record. The defendant in this matter could request a restitution hearing if he/she disputes the amount of restitution, which could ultimately result in extra cases essentially "clogging" the courts. Additionally, questions arise as to how to handle TBD restitution orders when a victim ultimately does incur losses but the losses are ongoing (i.e. mental health therapy). Is the case returned to the courts every time the victim incurs additional losses? Another issue which needs to be addressed involves offenders who are sentenced to correctional facilities with TBD restitution orders. How can the orders be amended to include a dollar amount when the offender is incarcerated and therefore not able to attend a restitution hearing without causing the state to incur additional expenses?

The Board is working towards a resolution that will provide an administrative mechanism for handling TBD restitution orders without bogging down the criminal justice process. Since the readers of the Restitution Review have first hand knowledge of how the process works (or perhaps, does not work), the Board encourages anyone with ideas, input or suggestions regarding this issue to contact the Board. If you have information that will assist the Board in this addressing this problem, please contact Jody Patel, Chief, Revenue Recovery and Compliance Branch at (916) 324-8987. Your input would be greatly appreciated.☒

his or her present income, the number of persons dependent on that income, and the necessary obligations of the family, including, but not limited to, rent or mortgage payments, food, children's school tuition, children's clothing, medical bills, and health insurance. However, **the parent or guardian has the burden of showing his or her lack of ability to pay.**

Affect of Juvenile Offender Attaining the Age of 18

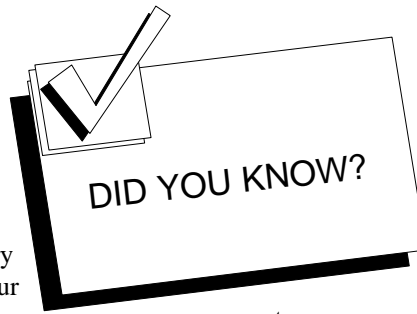
Once a parent or guardian is found to be jointly and severally liable with a juvenile offender for the amount of the juvenile's restitution obligations, **the parent or guardian's liability to pay the juvenile's restitution obligations is not extinguished upon the minor reaching the age of 18.** It is important to note that only a court can alter the parent or guardian's liability, should the parent or guardian successfully rebut the presumption of liability imposed by Section 730.7.

The public policy underlying parental/guardian liability for the willful misconduct of a juvenile offender is that the parent or guardian should be held liable for a juvenile's misconduct because the juvenile's misconduct is the result of the parent or guardian's failure to properly supervise or control the juvenile *at the time the offense was committed*. Therefore, since the parent or guardian's liability arises at the time of the juvenile's misconduct, it is unaffected by the juvenile later attaining the age of majority. A juvenile turning 18 years of age does not change the fact that the parent or guardian failed to properly supervise or control their child when he or she was a minor.☒

Parent or Guardian's Ability to Pay

Welfare and Institutions Code Section 730.7 provides that the parent or guardian of a juvenile offender shall be rebuttably presumed to be liable for the restitution obligations of the juvenile offender, *subject to the court's consideration of the parent's or guardian's ability to pay*. The court may consider the parent or guardian's future earning capacity,

¹ See, Welfare and Institution Code Sections 730.7(b)(5), 656(k), 659(g), and 700 for notification requirements concerning the imposition of parental/guardian joint and several liability with minor for restitution obligations.



The Board of Control's Revenue Recovery and Compliance Branch analysts are your county's resource for restitution information.

The Restitution Analysts are available for any restitution questions you may have, and will be contacting your county in the near future to arrange meetings to discuss

restitution issues. If you would like to arrange for a Restitution Analyst to come to your county to discuss restitution or simply have a restitution question, please contact the representative whose name appears before your county below and he/she will be happy to come to your office to meet:

CHIP SKINNER (916) 324-8313

Fresno, Humboldt, Imperial, Los Angeles, Madera, Monterey, Plumas, Riverside, Sacramento, San Benito, San Luis Obispo, Santa Cruz, Tehama, Trinity

DONNA PORTEE (916) 323-6868

Alameda, Contra Costa, Del Norte, Inyo, Kings, Mariposa, Mendocino, Merced, San Francisco, San Mateo, Santa Clara, Solano, Stanislaus, Tulare

LINDA PALUDA (916) 327-5837

Alpine, Calaveras, Colusa, Kern, Lassen, Modoc, Napa, Orange, San Bernardino, Santa Barbara, Shasta, Siskiyou, Sutter, Yolo

MAUREEN DUMAS (916) 327-0345

Amador, Butte, El Dorado, Glenn, Lake, Mono, Nevada, Placer, San Diego, San Joaquin, Sierra, Sonoma, Tuolumne, Ventura, Yuba

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